

**THE REAL ESTATE COUNCIL OF ALBERTA**

**IN THE MATTER OF** section 39(1)(b) and section 41 of the *Real Estate Act*, R.S.A. 2000, c. R-5, as amended

**AND IN THE MATTER OF** a Hearing regarding the conduct of **Sara Green**, a real estate associate, at all material times registered with Twin Oaks Real Estate 1993 Inc. o/a Re/Max House of Real Estate.

Hearing Panel Members: Norm Jensen, Chair  
Sheldon Johnston  
Bill Buterman

Hearing Date: November 3, 2011

Appearing: Andrew Bone, Counsel for the Executive Director  
Patrick Heinsen, Counsel for Sara Green

Witnesses: A.G.  
Sara Green

**DECISION OF A HEARING PANEL OF THE REAL ESTATE COUNCIL OF ALBERTA  
ON CONDUCT DESERVING OF SANCTION**

I) INTRODUCTION

The Panel heard evidence and argument on allegations of conduct deserving of sanction.

A.G. is the complainant. He and his wife purchased a condo with Ms. Green acting as their agent. The issue before us is whether Ms. Green used reasonable care and skill in drafting the Offer to Purchase for the G's and whether she took reasonable steps to discover the correct size of the condo.

The Panel has considered the evidence of the witnesses, the documents entered and the argument of counsel and finds that a case for breach of the sections has not been made by the Executive Director and therefore we find there is no conduct deserving of sanction.

## II) ALLEGATIONS

The Notice of Hearing attached as **Schedule “A”** to this decision, sets out 3 allegations. The 3<sup>rd</sup> allegation is stated to be in the alternative. It is not clear from the Notice of Hearing whether the alternative applies to one or other or both of the prior 2 allegations. This Panel has proceeded on the basis the 3<sup>rd</sup> allegation is being made by the Executive Director only where the other allegations are not proven.

The first two allegation are that Ms. Green contravened Rule 58(g) and (i) of the Rules made by Council pursuant to the Real Estate Act. These sections state:

58 The basic obligations of an industry member who is in a sole agency relationship with a buyer are to:

(g) exercise reasonable care and skill in the performance of the agreement;

(i) take reasonable steps to discover relevant facts pertaining to any property for which the buyer is considering making an offer;

The third allegation is that Ms. Green contravened Rule 41(b) which states:

41 Industry members must:

(b) provide competent service;

## III) FINDINGS OF FACT

A.G. and C.G. are a married couple. A.G. was a retired educator. He became a real estate associate in July 2010 but at the time of these events he did not consider himself an expert in real estate.

In August 2007 the G's were looking for a new condominium to live in. They were seeking a single level apartment style condo as A.G. had had knee surgery, was anticipating further surgery and wanted to avoid stairs.

They saw a sign posted by Sara Green advertising a condo for sale in their current condo complex at Inverness Square in Calgary. They met Ms. Green for the first time on August 9, 2007, to view the property she was advertising.

This first condo was not suitable for the G's. After the viewing the G's related to Ms. Green what they were looking for.

A.G. testified that while talking after the first viewing Ms. Green told them of a condo that was over 1700 square feet listed for \$479,000 at Inverness Gate.

Ms. Green however testified that she sent an email with links to the MLS listing for several condos including the one at Inverness Gate SE. Ms. Green did not enter a copy of the email into evidence and A.G. testified that if she did send an email he did not receive it.

Ms. Green relied on size in order to identify the comparables she referred to the G's, citing in her evidence for example one condo of 1667 square feet which sold for \$485,000 on March 10 of that year.

Ms. Green identified a copy of a MLS Listing (Exhibit A-12) as the listing she sent to A.G. by email. This copy has her handwriting on it. She wrote "4 – 5 OK No code" on the copy which she explained meant the condo was available for showing between 4 and 5 pm and there was no lock box.

It was agreed between the G's and Ms. Green that Ms. Green would arrange to show them the condo at Inverness Gate and assist them as buyers.

The MLS listing is central to this conduct hearing. It was prepared by the listing agent and it is agreed by A.G. and Ms. Green that it contained several errors:

- The size of the condo is shown as 1616.75 square feet or 150.2 square meters for the total living area. This size of 150.2 is also entered as the Registered Size. This size was inaccurate.
- The listing identifies 2 parking stalls as "2/108 and 109/titled" Each stall has a title separate from the condo title and the stall numbers are wrong. The correct stalls are 246 and 247.
- The legal plan number on the MLS listing is 0414539. The correct plan number is 0711166

The G's viewed this property with Ms. Green on August 10, 2007. Ms. Green advised that the condo fees were \$447/mo and that it came with 2 parking stalls in the underground parkade. They spent about ½ hour viewing the condo itself and then toured the rest of the common areas.

There was a brochure prepared by the listing agent describing the property which Ms. Green obtained a copy of. The G's did not receive a copy of this brochure. This brochure also indicated that the size of the condo was 1616.75 square feet. The brochure states "There is over 1600 square feet of living space."

After viewing the property the G's decided to offer \$460,000 for the Condo. They came to this price on their own. The G's called Ms. Green who attended before them and drafted an Offer to Purchase. Ms. Green identified herself as the G's representative in this Offer to Purchase.

Ms. Green copied the incorrect Plan number from the MLS listing onto the Offer. She did not make any reference to the 2 parking stalls in the Offer.

Ms. Green included two conditions in the Offer: a condition that the buyers will obtain financing and a condition that the buyers will be satisfied with the condominium documents listed in a schedule to the Offer which the seller was to provide.

Paragraph 10.2 of the Offer includes the statement "Any representations as to the measurements of the Buildings are only approximations and may not be accurate. The Buyer may wish to obtain an independent property inspection and verify the measurements of the Land and Buildings."

The G's Offer was presented at 7:10pm. After a brief negotiation a sale price of \$470,000 was accepted by the Sellers at 8:00pm the same night.

The condo documents were delivered by Ms. Green to A.G. early the next morning to accommodate the G's travel plans and A.G. reviewed them on his own. Ms. Green did not review the documents and A.G. was not expecting or relying on Ms. Green to review them.

Within the condo documents was a document A.G. located which indicated the unit was 1711 square feet. A.G. testified that he believed this confirmed of the size of the condo.

Also included with the condo documents was the condominium plan. It shows the size of the condo to be 142.7 square meters in a small table of unit sizes next to the plan diagram. This size figure was not noticed by A.G. during his review of the documents.

At the time of the purchase A.G. was on the board for his prior condominium complex and the Panel finds that he had some familiarity with the condominium documents that were provided by Ms. Green.

The G's obtained financing and determined on their own that the condo documents were satisfactory. They signed a waiver of the conditions on August 16, 2007.

The transaction closed as anticipated. The incorrect Plan number and lack of reference to the 2 separate parking stalls did not prevent the G's from obtaining title to the intended condo and the 2 stalls. They moved in and A.G. stated that he and his wife found the size acceptable and were happy with the unit.

In October of 2008, the G's were planning another move. They asked for an estimate of their condo's current market value from R.S., an associate with Re/Max First. R.S. prepared a Comparative Market Analysis for the G's.

MA.G. advised R.S. that the condo was 1711 square feet. R.S. on viewing the condo advised that it was less than 1711. R.S. reported in his CMA that the property was only approximately 1400 square feet.

A.G. testified that R.S. pointed out to him that MLS listings provide information on 2 different size parameters: Total (or CREB) size and Registered size. He explained to A.G. that CREB size is the living space and Registered size is the size of the footprint of the property including the walls. CREB size is therefore expected to be smaller than the Registered size. A.G. provided a copy of the CMA and testified that R.S. showed him 3 MLS listings in the CMA where R.S. was able to identify possible errors in the recording of size on the listings. In two MLS listings the sizes were identical and in one the CREB size was actually larger than the Registered size.

The prior MLS listing for the G's' condo had the same size of 150.20 square meters for both CREB size and Registered size.

The CREB guidelines were entered as an exhibit. Registered size and Total living area are defined as R.S. described. The guideline also states "Members are responsible for the accuracy and completeness of all condominium unit listings, whether Member electronically loaded or loaded by the Board. The MLS Listings Department will withdraw active condominium listings from CREB's MLS database that display misrepresented or incomplete information."

After the advice from R.S., A.G. obtained a measurement of the condo. The size of the property was confirmed by D.A. of Imeasure to be 1547.25 square feet or 143.74 square meters for the registered size (Exhibit A-10). A second measurement resulted in a figure of 1464.4 square feet or 136.05 square meters (Exhibit B).

On learning the measured size of the condo A.G. filed a formal complaint with RECA against Ms. Green in January of 2009.

A.G. testified that he felt he would not have bought the property had he been made aware of the true size. They were previously living in a condo valued at \$428,000 that was 1608 square feet. At the hearing he expressed doubt they would have bought the condo for \$470,000 knowing the actual size though he was not sure. There were advantages to the property but they also had the option of continuing to look. He conceded that he and his wife did not notice that the property was smaller than their current property and while living there were happy with the property.

Ms. Green is a real estate associate and has been an industry member since April of 2005.

Ms. Green testified that it was not her “standard practice” to review the size of a property unless there was some indication that an error had been made. She testified that her brokerage policy did not require her to verify MLS listing information nor to review the title for a property prior to drafting an offer on behalf of a buyer. She was aware of the CREB guidelines for MLS entries.

She was not aware at the time of any reason to question the accuracy of the size as it appeared in the MLS listing and the brochure.

Evidence confirming the brokerage policies from the time in question was not entered and R.S. was not called as a witness. What A.G. said of R.S.'s observations is hearsay and we cannot use R.S.'s observations about the listings as evidence of an industry standard. That would be giving too much weight to hearsay evidence. There was no evidence from other senior members of the industry or prior RECA Panel decisions which may have addressed what was expected of Ms. Green in this situation.

We also did not hear evidence on why Ms. Green failed to enter any reference to the parking stalls in the G's' Offer to Purchase.

We find that after the first viewing the G's and Ms. Green entered into a buyer and agent relationship. This was by consensual conduct and not express or in writing. Ms. Green was receiving confidential information from the G's and was undertaking to perform tasks on their behalf in furtherance of their interests. A sole agency relationship was therefore formed and Rules 58 (g) and (i) applied to Ms. Green's conduct.

The paragraph in the Offer to purchase which qualifies any representation as to size as an approximation and not warranted to be true by the sellers is not a term which affects the obligations owed by Ms. Green under the Rules. It is a term of the contract between the Buyers and Sellers. It speaks only to the information the G's have concerning their contractual rights as against the Sellers but not the obligations of their agent. There was no evidence it was discussed between Ms. Green and the G's as relieving her of any obligation under the Rules or as agent.

Further the CREB guidelines govern the obligations between CREB and the industry member using the MLS system. It does not create a standard or determine the standards of conduct under a sole agency relationship. It is a circumstance outside of that relationship which may affect the parties' understanding of the obligations on the listing agent but Rule 58 continues as the standard of conduct owed to the buyers.

We find that Ms. Green did not provide a copy of the MLS listing to the G's for 2131 48 Inverness Gate prior to viewing or purchasing the property. If Ms. Green had this MLS sheet, and clearly she did prior to the showing for she wrote the

viewing time on it, it was not the source of information that the condo was 'over 1700 square feet'.

There was no evidence apart from A.G.'s testimony that Ms. Green told them the condo was over 1700 square feet. It is more likely than not that A.G. is mistaken regarding the size indicated by Ms. Green prior to or during the viewing given the length of time since the events.

A.G. more likely than not formed the recollection that Ms. Green said 'over 1700 square feet' after he saw the 1711 figure in the Condo Documents and this recollection crystallized after he learned from R.S. that the condo was not over 1700 square feet. Apart from this possibility we have no other explanation that is reasonable to us.

We find that on a balance of probability that if Ms. Green made reference to the size of the condo she would have repeated the size indicated on the MLS listing and brochure both of which were in her possession and both of which support a description of 'over 1600 square feet'.

We find Ms. Green took no steps to confirm the size indicated on the MLS Listing. We find that Ms. Green was not aware of any problem with the size as indicated in the listing so had no reason to look behind the information on the listing. We find that she did not refer to the two titled parking spots on the contract though we have no evidence why.

#### IV) FINDINGS RE CONDUCT DESERVING OF SANCTION

Ms. Green was agent for the G's and Rules 58 (g) and (i) apply as the standard required of Ms. Green.

##### **First Allegation**

"Agreement" in Rule 58(g) refers to the agency agreement formed between Ms. Green and the G's. As this was an agreement formed by action and consent the terms of that agreement are not express. We did not hear evidence from the witnesses on what they believed the terms of the agreement were. We do not find that a term existed that Ms. Green would verify condo size, title or confirm title status of the two parking stalls.

At the most we can find that G's expected Ms. Green to prepare the Offer for them. In doing this she relied on the information in the MLS listing and did not pursue information beyond the MLS information.

Ms. Green did not identify any reason to question the listing information and we heard no evidence apart from the hearsay evidence of R.S. that she should have

been able to identify any indication of errors. In the absence of a reason to question the information in the listing we find that Ms. Green exercised reasonable skill and care in the performance of this agreement by relying on the information as set out in the listing.

On the first allegation we therefore find no conduct deserving of sanction.

### **Second Allegation**

We find that Ms. Green had no indication of possible error regarding the size and plan number in the MLS listing and no standard was in evidence that she should have identified a possible error. In the absence of evidence of either a standard that would require Ms. Green to pursue further confirmation of information in the listing or some standard of review for possible errors expected of Ms. Green, we find that she acted reasonably in relying on the MLS listing information. She had information she required and no reason to take further steps.

We also find that Rule 58(i) did not impose an obligation on Ms. Green to determine the title status of the two parking stalls. The stalls were indicated on the MLS listing with no indication that they were titled separately. We heard no evidence that further inquiry into the status of a parking stall for a condo is an industry standard or best practice. On this basis the Executive Director has not proven an element of the allegation (the standard of reasonable practice) on a balance of probability.

### **Third Allegation**

This allegation concerns general competence. Having found Ms. Green did not breach either rule associated with standards for her role as buyers' agent, we find the allegation of breaching a duty of general competence has not been proven.

## V) **ORDERS**

Having found insufficient evidence of conduct deserving of sanction the matter is concluded unless the Executive Director seeks an order with respect to costs. Counsel for the Executive Director will have 10 business days from receiving this decision to provide submissions to Panel Legal Clerk on costs. Panel Legal Clerk will then provide these submissions to counsel for Ms. Green.

Ms. Green will then have a further 5 business days to provide the Panel Legal Clerk with Reply submissions if any. The Panel Legal Clerk will provide the Reply, if any, to counsel for the Executive Director and then will provide all submissions to the Panel.

If no submissions are received from the Executive Director within the time allocated, the Hearing Panel will proceed to make a decision with respect to costs without the benefit of those submissions.

This decision was made on this 15<sup>th</sup> Day of December, 2011.

*Norm Jensen, Chair*

*Sheldon Johnston*

*Bill Buterman*

Schedule "A" to the Hearing Panel Decision Dated December 15, 2011

Investigation File: 7192-09

**THE REAL ESTATE COUNCIL OF ALBERTA**

**IN THE MATTER OF** section 39(1)(b) and section 41 of the *Real Estate Act*, R.S.A. 2000, c. R-5, as amended

**AND IN THE MATTER OF** a Hearing regarding the conduct of **Sara Green**, a real estate associate, at all material times registered with Twin Oaks Real Estate 1993 Inc. o/a Re/Max House of Real Estate.

**NOTICE OF HEARING**

**TO:** Sara Green, Associate  
Re/Max Signature Properties  
105 Elizabeth Street PO BOX 640  
Okotoks AB T1S 1A8

**TAKE NOTICE THAT** you are required to attend a hearing before a Hearing Panel at 9:30 a.m. on, May 11, 2011 in the City of Calgary, in the Province of Alberta, at the offices of the Real Estate Council of Alberta, located at Suite 350, 4954 Richard Road S.W., Calgary, Alberta.

**AND FURTHER TAKE NOTICE** that you will be required to answer the following allegations:

1. **THAT** between the period of approximately August 10<sup>th</sup>, 2007 and August 17<sup>th</sup>, 2007 you, Sara Green, associate at all material times registered with Twin Oaks Real Estate 1993 Inc. o/a Re/Max House of Real Estate, in breach of section 58(g) of the Rules made pursuant to the *Real Estate Act*, R.S.A. 2000, c. R-5,

failed to exercise reasonable care and skill in the performance of the agreement  
This is conduct deserving of sanction, the particulars of which are that:

- (a) On or about August, 2007 you were retained in your professional capacity as a real estate associate to provide services in the purchase of a condominium unit located in the province of Alberta.
- (b) At the material time, the subject property, a condominium unit was described on title number 071 151 562, as Condominium Plan 0711166, unit number 152 and 98 undivided one ten thousandth share in the common property.
- (c) On or about August 10, 2007, you completed a Real Estate Purchase Contract on behalf of your client, notwithstanding that you had made no efforts to verify or confirm the information provided on the listing, or without a condition compelling such an enquiry.
- (d) As a result thereof the offer to purchase was completed using incorrect information and legally describing the property as "Plan 0414539" and "Unit 2".
- (e) Further, the offer to purchase failed to reflect the intentions of your client who intended to include in the offer the purchase two titled parking stalls, but no mention was made of the parking units or their legal descriptions, nor was their title reviewed, or any conditions placed in the offer to purchase in their regard.

2. **THAT** between the period of approximately August 10<sup>th</sup>, 2007 and August 17<sup>th</sup>, 2007 you, Sara Green, associate at all material times registered with Twin Oaks Real Estate 1993 Inc. o/a Re/Max House of Real Estate, in breach of section 58(i) of the Rules made pursuant to the *Real Estate Act*, R.S.A. 2000, c. R-5, failed to take reasonable steps to discover relevant facts pertaining to a property for which the buyer intended to make an offer to purchase. This is conduct deserving of sanction, the particulars of which are that:

- (a) On or about August, 2007 you were retained in your professional capacity as a real estate associate to provide services to a buyer in the purchase of a condominium unit located in the province of Alberta.
- (b) At the material time, the subject property, a condominium unit was described on title number 071 151 562, as Condominium Plan 0711166, unit number 152 and 98 undivided one ten thousandth share in the common property.

- (c) Notwithstanding that the registered size of the subject property, as stated on Condominium Plan 0711166 was 142.7 m<sup>2</sup> the MLS listing on the subject property stated the registered size of the property as 150.2 m<sup>2</sup>. It further claimed a total size of 150.2 m<sup>2</sup>.
  - (d) On viewing the property with her clients, a detailed feature sheet, created by the listing associate was obtained which further particularized the size of the unit as 1616.75 ft<sup>2</sup> (150.2 m<sup>2</sup>) and possessing “over 1600 ft<sup>2</sup> of living space”.
  - (e) The tour of the property revealed a spacious deck affixed to and accessible from the unit or for its exclusive use. Notwithstanding that the “living space” was represented to equal the total registered size, no enquiry was made regarding the impact of the large deck.
  - (f) On or about August 10, 2007 and within hours of viewing the property, the buyers an interest in submitting an offer to purchase on the subject property.
  - (g) The offer to purchase was made subject to a financing condition and those conditions articulated in a condominium property schedule, including an exchange of condominium documents.
  - (h) Condominium documents, including the condominium plan, which stated the correct registered size was obtained by you and forwarded to your clients without any review.
  - (i) Notwithstanding that the registered size of the unit was alleged to be the same as its total size; the presence of the large deck; and the correct registered size being clearly observable in the condominium plan, no enquiry was made by you as to the size of the property.
  - (j) A dispute subsequently arose as to the size of the subject property.
3. **THAT** further or in the alternative, that between the period of approximately August 1<sup>st</sup>, 2007 and August 17<sup>th</sup>, 2007 you, Sara Green, associate at all material times registered with Twin Oaks Real Estate 1993 Inc. o/a Re/Max House of Real Estate, in breach of section 41(b) of the Rules made pursuant to the *Real Estate Act*, R.S.A. 2000, c. R-5, failed to render a competent service. This is conduct deserving of sanction.
4. **THAT** further or in the alternative, that between the period of approximately August 10<sup>th</sup>, 2007 and August 17<sup>th</sup>, 2007 you, Sara Green, associate at all material

times registered with Twin Oaks Real Estate 1993 Inc. o/a Re/Max House of Real Estate, in breach of section 58(o) of the Rules made pursuant to the *Real Estate Act*, R.S.A. 2000, c. R-5, failed to assist the buyer in negotiating favourable terms and conditions with a seller and in preparing and complying with a legally binding agreement of purchase and sale of the property. This is conduct deserving of sanction.

**AND FURTHER TAKE NOTICE** that the Hearing Panel may make one or more orders in section 43 of the *Real Estate Act*, including but not limited to an Order cancelling or suspending any authorization issued to you by the Council, an Order requiring you to pay a fine, and an Order requiring you to pay the costs of the Hearing.

**AND FURTHER TAKE NOTICE** that the following Hearing Panel members will hear the allegations against you, and the evidence in support of same:

1. Bill Buterman
2. Sheldon Johnston
3. Norm Jensen
4. Trent Gelmici, alternate

If you have any objections to the composition of the Hearing Panel, you must notify the Real Estate Council of Alberta of the objections, together with the reasons for the objections, within 14 days of receipt of this Notice of Hearing. If you fail to object to the composition of the Hearing Panel within 14 days, the proposed Hearing Panel will hear the allegations against you.

**AND FURTHER TAKE NOTICE** that the Hearing Panel will accept oral or written submissions or both and, unless otherwise ordered by the Hearing Panel, written submis-

sions must be received by the Hearing Panel within 15 days after the date on which all evidence has been received by the Hearing Panel.

**AND FURTHER TAKE NOTICE** that the Hearing Panel may proceed with the hearing in the absence of the industry member who is the subject of the hearing or the Hearing Panel may dismiss or reschedule a hearing if the industry member does not attend the hearing.

**DATED** at the City of Calgary, in the Province of Alberta, this 16<sup>th</sup> day of March, 2011.

**REAL ESTATE COUNCIL OF ALBERTA**

Per:

*Bob Myroniuk*  
Executive Director

Cc: Graham Mayne, Discover Real Estate Ltd.  
Michael Cain, R/Max House of Real Estate  
Patrick Heinsen, Partner, Borden Ladner Gervais  
Mark Lancaster, RECA Legal Counsel

RECA case 7192-09